

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS McCUNE,
Petitioner,

Civil Action No. 05-1042

v.

Judge Arthur J. Schwab
Magistrate Judge Lisa Pupo Lenihan

COMMONWEALTH OF
PENNSYLVANIA,
Respondent.

ORDER

A petition for writ of habeas corpus was received in the above-captioned case by the Clerk of Court on July 28, 2005. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On October 21, 2005, the magistrate judge issued an Order notifying Petitioner that his habeas petition would not be filed or processed any further for failure to comply with the Federal Rules and Local Rules and that if he wished to proceed he must include \$5.00 for a filing fee or move to proceed *in forma pauperis* by November 14, 2005. Petitioner did neither, and no further docket activity occurred.

On December 16, 2005, the magistrate judge issued a Report and Recommendation (Doc. No. 2), recommending that this case be dismissed for failure to prosecute. The Petitioner was served at his address of record. He was advised that he was allowed ten (10) days from the date of service to file written objections to the report

and recommendation. Petitioner did not file objections.

After review of the submissions and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 24th day of January 2006;

IT IS HEREBY ORDERED that the Clerk's office mark this case DISMISSED for failure to prosecute.

IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 2) of Magistrate Judge Lenihan, dated December 16, 2005, is adopted as the opinion of the court.

s/Arthur J. Schwab

The Honorable Arthur J. Schwab
United States District Court Judge

cc: Lisa Pupo Lenihan
UNITED STATES MAGISTRATE JUDGE

THOMAS MCCUNE
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